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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/732,695	12/08/2000	Gutman Levitan	HBK-02802/03	2885
25006 7590 04/23/2007 GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			EXAMINER HOYE, MICHAEL W	
			ART UNIT	PAPER NUMBER
			2623	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/23/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/732,695	<b>Applicant(s)</b> LEVITAN ET AL.	
	<b>Examiner</b> Michael W. Hoyer	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on February 20, 2007 has been entered.

### ***Response to Arguments***

2. Applicants' arguments, filed on February 20, 2007, have been fully considered but they are not persuasive.

Regarding amended independent claim 8, the Applicants argue on page 4 that, "claim 8 clearly distinguishes from any reasonable combination of Rosser and Watts et al. by providing a timetable file which performs the dual function of acting as a TV guide for assisting a user in selecting a channel for viewing and enabling the substitution of selected commercials from the storage means for commercials transmitted with the program material on the selected channels."

The Applicants also argue on pages 4-5 that, "...[The] Watts et al. patent makes no reference to commercials accompanying the program material or arrangements for changing those commercials based on [a] stored profile of the user's demographics. Similarly, Rosser makes no reference to an electronic program guide."

In response the Examiner respectfully disagrees with the Applicants because the Watts et al patent specifically teaches the use of a programming guide available for user access, which includes an interface, such as a graphical user interface (GUI), which allows a user to interact with programming database control 125 and thereby access the contents of the programming guide (col. 6, lines 45-52). Additional information can also be stored for the various programs in the programming guide, including an identifier of a portion of subsidiary data, a location of the portion of subsidiary data, etc. (col. 6, lines 21-29). And, Watts discloses in col. 4, lines 24-31 that, “subsidiary data 117, also referred to as “extracast” information or data, comprises additional multimedia data which is designed to supplement one or more programs from primary content data 107. Examples of such additional multimedia data include ... advertisements, etc.” Therefore, Watts clearly teaches commercials accompanying the program material.

In response to Applicants’ arguments against the references individually, (i.e. “The Watts et al. patent makes no reference to ... arrangements for changing those commercials based on [a] stored profile of the user’s demographics.”), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Rosser reference was used to reject this limitation as presented in claim 8.

Regarding, the Applicants’ argument that, “Rosser makes no reference to an electronic program guide.” The Examiner respectfully notes, as previously presented in the last office action and in the rejection below, that Rosser discloses “assisting a user in selecting a channel for viewing” as met by col. 11, lines 27-39, where, “the viewer interacts with their television set via

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the remote control device 71, or other similar viewer controlled device such as but not limited to, buttons or switches on the viewer set or set top device. The viewer operations of ... channel selection ... and other viewer usage choices are handled by the viewer control interface 148, which may be a **graphic user interface** displayed on the viewers television or video display. The viewer requests are passed on to the central controller 146, which is typically a programmed micro-processor, as is well known in the art of embedded control technology.” Although, the Rosser patent does not explicitly use the terminology of an “electronic program guide” or “EPG”, the “graphic user interface” or GUI as described by Rosser has similar or equivalent functionality as an EPG. Furthermore, the Watts patent, as combined with Rosser, explicitly teaches or provides additional evidence that an EPG is a GUI as described above and in the rejection below.

In addition to, in response to Applicants’ argument that, “[The] timetable file...performs the dual function of acting as a TV guide for assisting a user in selecting a channel for viewing and enabling the substitution of selected commercials from the storage means for commercials transmitted with the program material on the selected channels”, Rosser specifically teaches channel selection through the use of a GUI, and the automatic placement of selected video indicia or sequences (i.e. advertisements) which are stored locally on a set-top device based on demographic information and a table associating ranges of viewer profiles with video indicia or sequences (specifically see col. 13, lines 13-41 and col. 15, line 35 – col. 16, line 10 of Rosser). Furthermore, the Watts patent teaches in more specific detail a GUI/EPG, that includes primary content data (or program material on each channel) and subsidiary data or advertisements, wherein the display of subsidiary data or advertisements is synchronized to the display of the

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primary content data (see col. 7, lines 8-35 for example). Therefore, the combination of Rosser and Watts meet the newly amended limitation of claim 8 as described above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosser (USPN 6,446,261), in view of Watts et al (USPN 6,324,694), both cited by the Examiner.

As to claim 8, Rosser teaches a communication system and method with demographically defined audiences for providing targeted commercials. The claimed “system for delivery of different versions of the same television program depending on viewer’s information stored viewer’s receiver” is met by Rosser with reference to Figure 4, showing a receiver system storing a demographic profile at 170. A plurality of “basic channels for transmitting to a viewer’s receiver on a plurality of channels, primary versions of television programs containing commercials that may be replaced by alternative commercial components (or video fragments) to produce alternative versions of those television programs” are provided via sources 134 and 136. Alternative commercials are provided over an alternative video or television feed as taught in col. 13:13-23. Default programming and commercial alternatives are transmitted to receivers in the network which compare locally stored (170 of Fig. 4) personal profile / demographic data to select a targeted commercial for display (col. 4:31-41). The claimed “means for transmitting

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over one of said television channels to a viewer's receiver, a timetable file constituting a TV guide with descriptive and time/channel data relating to the commercial components of the transmitted television channels and data relating to alternative commercial components which may be used to replace commercial components of said programs" is met in part by col. 15, line 55 - col. 16, line 10, which discloses that a table is created remote from a user that includes data related to viewer profiles and video indicia or sequences, which are related to the commercial components of transmitted television channels, and the table or "timetable file" is transmitted over a television channel and stored in the user's device. The table as described above includes encoded data pertaining to where and when to insert video indicia or sequences, which is the equivalent of a "timetable", and the table or "timetable" is transmitted by a video distribution mechanism to a set-top device for storage, where the table is the equivalent of a "timetable file" as claimed. Once a commercial is identified as a match for the local profile, the commercial is substituted "for commercials transmitted with the program material on the selected channel under control of the stored profile of the viewer's demographic information and said descriptive and time/channel data" as claimed (col. 13:37-40). These commercials are retrieved from local storage 152 and displayed to viewers as taught in col. 13:24-36. Rosser also discloses the claimed "means for allowing a user... to select one channel for viewing" as met by col. 11, lines 27-39, where, "the viewer interacts with their television set via the remote control device 71, or other similar viewer controlled device such as but not limited to, buttons or switches on the viewer set or set top device. The viewer operations of ... channel selection ... and other viewer usage choices are handled by the viewer control interface 148, which may be a graphic user interface displayed on the viewers television or video display. The viewer requests are passed on

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to the central controller 146, which is typically a programmed micro-processor, as is well known in the art of embedded control technology.” The Rosser Patent does not explicitly disclose the claimed “means for allowing a user to view the descriptive and time/channel data and to select one channel for viewing from said timetable file”, where the “timetable file” acts as an electronic TV guide to allow a viewer to select a channel for viewing from the multiple channels available. However, the Watts et al patent teaches a method and apparatus for allowing a user to view the descriptive and time/channel data and to select one channel for viewing from the timetable file as described in col. 3, lines 47-55; col. 4, lines 23-46; col. 6, lines 10-52; col. 7, lines 8-15; col. 7, line 61 – col. 8, line 7; and col. 8, lines 17-20, where a user may search or view the descriptive and time/channel data relating to commercial components or ads of television programs and may also select a channel for viewing from the program guide. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the Rosser patent with the additional teachings of the Watts et al patent which incorporates the use of an electronic program guide for the advantage of providing the viewer with a program guide or timetable file which uses a graphical user interface that further includes descriptive and time/channel data relating to the commercial components of the transmitted television programs for the advantage of allowing a user to access the descriptive and time/channel data in order to view or modify information related to their own specific viewer profile, as well as to be able to select a channel for viewing from the program guide information. One of ordinary skill in the art would have been led to make such a modification for the advantages given above and since the use of electronic program guides (EPGs) is well known in the art of interactive television distribution systems. Regarding the claimed, “whereby, said timetable file performs the dual



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functions of assisting a user in selecting a channel for viewing and enabling the substitution of selected commercials from the storage means for commercials transmitted with the program material on the selected channel”, Rosser specifically teaches channel selection through the use of a GUI, and the automatic placement of selected video indicia or sequences (i.e. advertisements) which are stored locally on a set-top device based on demographic information and a table associating ranges of viewer profiles with video indicia or sequences, as described above (specifically see col. 13, lines 13-41 and col. 15, line 35 – col. 16, line 10 of Rosser). Furthermore, the Watts patent teaches in more specific detail a GUI/EPG, that includes primary content data (or program material on each channel) and subsidiary data or advertisements, wherein the display of subsidiary data or advertisements is synchronized to the display of the primary content data, as described above (specifically see col. 7, lines 8-35 for example). Therefore, the combination of Rosser and Watts meet the limitations of claim 8 as described above.

With respect to claim 11, Rosser teaches the claimed said means for transmitting a timetable file with descriptive and time/channel data includes such data for the commercial segments which are stored in col. 15:35+ through col. 16:10, as described above, for determining when and which commercial to select for presentation to a viewer.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoyer whose telephone number is **571-272-7346**. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at **571-272-7353**.

**Any response to this action should be mailed to:**

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is **571-272-2600**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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April 18, 2007

A handwritten signature in black ink, appearing to read "Michael W. Hoyer". The signature is fluid and cursive, with the first and last names being more prominent.

Michael W. Hoyer  
Patent Examiner  
Art Unit 2623